The Plaintiffs had the alternatives of joining all the Partners as Plaintiffs or of taking advantage of the special procedure by suing in the firm name. They have consistently refused to do so.

Dr. Withers-Payne referred to authorities of which *Re Vagliano Anthracite Colliery Co. Ltd.*[1] and *Performing Right Society Ltd. v. London Theatre of Varieties*[2] appear to be particularly relevant in these respects. Unless the partners are named, the firm is not before the Court. I would also refer to *Lindley*, 10th Edition at p. 348: "With respect to other simple contracts, whether written or verbal, where a contract is entered into with several persons jointly they should all join in an action upon it." And again at page 350: "One partner may sue alone on a written contract made with himself if it does not appear from the contract itself that he was acting as agent for a firm: and one partner ought to sue alone on a contract entered into with himself, if such contract is in fact made with him as principal and not on behalf of himself and others."

I would also refer to the Annual Practice p. 270 O.16 R. 11 as regards misjoinder and non-joinder of parties and the note thereon "The rule however in no way qualifies the necessity for having before the court the proper parties for determining the point at issue." If I understood Mr. Mitra correctly he submitted that the two Plaintiffs were not only entitled to maintain this Suit individually and in their personal capacities but were also entitled in such capacities to the fruits of any success that might thereby be gained, a somewhat surprising submission, in view of the specific terms of the agreement of the 3rd April 1947 and its recitals.

As regards the facts, I would have had more hesitation in dismissing the claim on, more or less, technical grounds, had I thought that there was any merit in the claim. On such facts it is abundantly clear that the Plaintiffs have wholly and absolutely failed to substantiate their claims and assertions.

It was quite impossible to place any reliance on any relevant matters asserted by the Plaintiff M. K. Varma and his witnesses, two of whom, at least, committed deliberate perjury.

I should have taken strong action in this latter respect had I been satisfied that these two witnesses were solely responsible for such perjury but I was not so satisfied.

It was unnecessary therefore to call on the Defendant for his Defence but it does appear that there would have been a further and complete answer to the claim. I refer to Clause 9 of the agreement and to the Defendant's letters to the Plaintiffs dated 28th April 1947, 21st May 1947, 9th June 1947 and the 2nd July 1947.

The claim is therefore dismissed with costs payable by the Plaintiffs, and the Defendant having withdrawn his counterclaim he must pay any costs arising therefrom, such costs to be deducted from the amount payable by the Plaintiffs.

Claim and Counterclaim dismissed.

PEENA MOONA MOHAMED ABDUL HAMEED & ANOTHER v. CHUA YAM QUEE.

[Orig. Civ. Juris. (Gordon-Smith, J.) February 27, 1950]

[Singapore — Originating Summons No. 207 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 4(2)(b)(iii) — Mortgage paid off during occupation — Meaning of "such extended period as was mutually agreed".

The facts in this matter were as follows:— By an Order of Court of 24th September 1941 the applicants were authorised, as Trustees, to mortgage the property in question and in pursuance thereof by Mortgage dated 11th November 1941 conveyed the property to the respondent. The amount of the mortgage was $17,000.00 expressed to be repayable on the 11th December 1941 and interest thereon. By notice dated 28th April 2603 (1943) the respondent required payment of the mortgage. As a result the applicants had to apply to Court to sanction a fresh mortgage and this caused delay in repayment. The respondent did nothing to enforce his security by sale or foreclosure and eventually after considerable delay and correspondence the mortgage money and all interest was repaid and a reconveyance dated 9th February 2604 (1944) was executed and registered in the Registry of Deeds on the 18th of March 1944. On the 26th September 1949 the respondent gave a notice to the Registrar of Deeds under s. 18 of the Dealings in Land (Occupation Period) Ordinance prohibiting any dealings with the land without due notice. The applicants in this Originating Summons asked (a) for an Order to declare that the mortgage was discharged by the reconveyance of 1944 and (b) for an Order that the notice in the Registry of Deeds be removed and the Registry of Deeds be rectified. The respondent claimed under s. 4 (2) (b) (iii) of the Debtor and Creditor (Occupation Period) Ordinance for a revaluation and argued that the amount due had not been paid "within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent."

Held, that on the facts of this case, the period for repayment had been extended by mutual agreement and the respondent was estopped from saying or attempting to prove otherwise.

ORIGINATING SUMMONS.

G. E. N. Oehlers for the applicants.

Chong Thutt Pitt for the respondent.

The facts and arguments appear sufficiently from the Judgment.

Cur. Adv. Vult.

Gordon-Smith, J. : — At the conclusion of the hearing of this Originating Summons I thought that it was extremely desirable to give my decision in writing as it arises out of the Moratorium, Debtor and Creditor Ordinance 1949 and such matters.

The facts are as follows. By Order of Court of 24th September 1941 the Applicants were authorised, as Trustees, to mortgage the property in question and in pursuance thereof by Mortgage dated 11th November 1941 conveyed the property to the Respondent. The amount of the Mortgage was $17,000 expressed to be repayable on the 11th December 1941, and interest thereon.

By Notice of 28th April 2603 (1943) the Respondent required repayment of the Mortgage and after some considerable delay and correspondence the mortgage money and all interest due was repaid and a Reconveyance dated 9th February 2604 (1944) was executed and registered in the Deeds Registry on the following 18th March.

On the 26th September 1949 the Respondent gave a notice to the Registrar of Deeds, in effect a caveat under Section 18 of the Dealings in Land (Occupation Period) Ordinance No. 37 of 1949, prohibiting any dealings with the land, without due notice.

This Originating Summons asks for Orders of Court (1) that the Mortgage of 1941 referred to above, was discharged by the Reconveyance of 1944 and (2) for the removal of the Caveat and rectification of the Deeds Registry in this respect.

The Respondent claims under the Debtor and Creditor (Occupation Period) Ordinance No. 5 of 1949, Section 4 Sub-Section (2) (b) (iii) for a revaluation in accordance with the scale set out in the Schedule to the Ordinance because the repayment evidenced by the Reconveyance of 1944 was in respect of a pre-occupation capital debt and was made in occupation currency. He bases his claim on Section 4 (2) (b) (iii) which reads as follows: "if due and demanded as aforesaid was not paid within three months of demand or within such extended period as was mutually agreed between the creditor or his agent and the debtor or his agent;"

For the Respondent, Mr. Chong Thutt Pitt claimed that repayment was not made within a period so mutually agreed.

The Affidavits of 26th November 1949 and 15th December 1949 set out all the correspondence that took place in regard to the extension of time.

Mr. Chong Thutt Pitt contended that there was no *mutual* extension of time after the 7th December 1943 and that there was final refusal to extend the time further than this.

It is not disputed that there was delay, partly due to the necessity to apply to Court for authority to execute a fresh mortgage which had, eventually, been negotiated. During this delay, the Respondent did nothing to enforce his security by sale or foreclosure proceedings, although he had threatened to exercise his power of sale by letter of the 17th November 1943, but he agreed to a further extension. The matters then appear to have been expedited, a mortgage arranged, the Court's approval obtained, correspondence took place as to the amount of interest due to the date of execution of the reconveyance which was forwarded by the Applicants' then Solicitors to Mr. Chong Thutt Pitt on the 10th January 1944 for execution by his Client. I understand that such was actually executed on the 4th February the day the principal and interest due was paid, namely $19,390.90 but the Deed was dated the 8th February and a further sum of $5.25 required for interest. The reconveyance duly executed by the Respondent was forwarded by letter dated the 9th February 1944 to the Applicants' solicitors. I am now asked by the Respondent to say that he did not agree to this extension of time to the 8th February and he asks for his mortgage to be reinstated as provided for by Section 11 of the Ordinance.

There is nothing to show that, but for the notice of 28th April, 1943 given by the Respondent to pay off the Mortgage, such Mortgage would be still subsisting, the interest regularly paid and the security still subsisting. He did not dispute that he acquiesced in the non-payment on or before the due date or that an extension of time was mutually agreed anyhow up to the 7th December. Even after that date he took no steps to enforce his security and he well knew that approval of the Court would have to be obtained to permit of another mortgage being arranged. No doubt such matters were difficult to provide for and delay could be expected under the circumstances and conditions then prevalent. It is abundantly clear however that he, at least, acquiesced in a further short extension of time and without protest or any earlier action, actually executed the reconveyance, I believe, on the 15th January 1944.

By doing so, and by the subsequent payment and acceptance of principal and interest when completion took place on the 8th February I am of the opinion that the period was further extended by mutual agreement between the parties, as provided for in

Section 4(2)(b)(iii) of the Ordinance. In consequence he is now estopped from saying or attempting to prove otherwise.

There will therefore be an Order in terms of Prayer (1) of the Originating Summons and an Order also for rectification of the Register of Deeds by cancellation of the notice endorsed thereon, dated the 26th September 1949. The Applicants having succeeded the Respondent must pay the costs of these proceedings, on the Higher Scale.

Orders accordingly.

IDA FERNANDEZ (M. W.) v. M. MURUGIAH.

[App. Civ. Juris. (Murray-Aynsley, C. J.) March 16, 1950]

[Singapore — District Court Appeal No. 3 of 1950]

Landlord and Tenant — Control of Rent Ordinance, 1947, ss. 16(a) and 17(b) — Statutory tenancy — Notice to quit — When necessary.

This was an appeal from the Civil District Court. A recent judgment of the said District Court in **Hodge** v. Parrish (1) (a copy of the judgment was annexed with the proceedings and formed part of the record of this appeal) decided that a tenant who remains in possession of premises let to him after the determination of his tenancy and who cannot be ejected "by the private action of the landlord without the aid of the Court" was a "statutory tenant" within the meaning of section 16 (a) of the Control of Rent Ordinance, 1947, and that the effect of section 17 (b) of the said Ordinance was "to make it encumbent on the landlord to determine the statutory tenancy before applying to the Court for recovery of possession". The words in parenthesis appear in the District Court's written judgment in **Hodge** v. **Parrish, supra.**

The facts in this case were similar to those in **Hodge** v. **Parrish.** The appellant appealed against the decision of the learned District Judge.

Held, (1) that section 16 (a) of the Control of Rent Ordinance 1947 is complete in itself and it was not necessary to add the words "by his private action without the aid of the Court" in order to construe it and (2) that if at the moment when the contractual tenancy is determined the case falls within one of the exceptions set out in section 14 of the Control of Rent Ordinance, 1947, the landlord is not prevented from obtaining possession by the provisions of the Ordinance and therefore the tenant does not become a "statutory tenant" and it is not necessary to serve a second notice to quit on him.

Case referred to:—

(1) *Hodge v. Parrish* (1950) M.L.J. iii.

APPEAL from Civil District Court.

K. Gould for the Appellant.

Mark Morrison for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — In this case the short point relates to the effect of a notice to quit given to a person who is not protected by section 14 of Ordinance No. 25 of 1947.

If he is protected he becomes a statutory tenant by section 16. In my opinion, unless he is so protected, he does not become a statutory tenant. If it were otherwise it would never be possible to terminate a statutory tenancy by notice, as the effect of notice would merely be to create another statutory tenancy.

The only way in which a landlord is prevented by the Ordinance from depriving the tenant of possession is section 14. If the case falls within one of the exceptions the landlord is not prevented from obtaining possession by the provisions of the Ordinance. Therefore, in such a case, there is no question of statutory tenancy.

Whether the case falls within one of the exceptions or not depends on the state of facts at the moment when the previous tenancy is determined.

I do not think it is necessary to add any words in order to construe section 14(1) as has been done by the learned District Judge.

Appeal allowed.